IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.449 OF 2005

1. Mohammed Hanif Zainuddin Shaikh
and another. ...Appellants.

vs.

1. Ramchandra Erappa Ghatnure
and others. ...Respondents

Mr.Surel S. Shah, for the Appellants.

Mr.G.S.Godbole, for the Respondent nos.1 to 6.

CORAM: SMT.RANJANA DESAI, J.

DATED: 30TH MARCH,2005.

P.C.:-

Admit.

Respondents waive the service.

By consent of parties taken up for final hearing.

1. In this first appeal, the judgement and order dated 2nd February,2005 passed by the III Additional District Judge, Solapur in Civil Miscellaneous Appeal no.137 of 2004 is under challenge. The brief facts of the case are as follows:

2. Shri. Kedareshwar Devasthan Kandalgaon is a public trust. It is registered under the provisions of Bombay Public Trust Act,1950,("the said Act" for short) having PTR No. A 734 Solapur. The appellants claim to be the trustees of the said trust. Admittedly, the trust has nine trustees. Out of them, five trustees have expired, leaving behind only four trustees. The case of respondent no.1 is that appellant no.1 has resigned from the trust. He has resigned on 19.1.1976. A meeting was held on 19.9.1976. In that meeting that resignation was accepted. The remaining three trustees held a meeting on 10.3.2002 and passed a resolution and appointed respondent nos.2 to 6 as trustees. A change report being Change Report No.293 of 2002 came to be filed on 22.3.2002. On 20.11.2003, the Assistant Charity Commissioner accepted the change report. It is an admitted position that no notices were issued to the appellants. The appellants filed Revision Application no.3 of 2004 before the Joint Charity Commissioner. On 17.8.2004, the Joint Charity Commissioner allowed the revision application filed by the appellants and he set aside the order of the Assistant Charity Commissioner allowing the change report. On 9.9.2004, the respondents filed Miscellaneous Appeal no.137 of 2004 before the District Court at Solapur. On 2.2.2005, the learned District Judge

allowed the appeal. He set aside the order passed by the Joint Charity Commissioner. He inter-alia held that appellant no.1 had resigned from the trust and therefore, it was not necessary to issue a notice to him, and that appellant no.2 was present when the resolution was passed on 10.3.2002 and therefore, he was estopped from challenging the change report and that the change report was uncontested. It is this judgement and order which is challenged in this appeal.

3. I have heard learned Counsel Mr.S.S.Shah, for the appellant and Mr.Godbole, learned Counsel for the respondents. Mr.Shah, contended that the case of the respondents that appellant no.1 had resigned is false. Appellant no.1 has not resigned and this is evident from the fact that his name still appears in the PTR entry as a trustee of the trust. Learned Counsel contended that it was therefore incumbent upon the Assistant Charity Commissioner to issue notices to the appellants. Learned Counsel relied on the judgement of this Court in Marutirao Vishwanath Bagal and others Vs. Dinkar Kashinath More and others, 2004(4) Mh.L.J. 982 and contended that the inquiry contemplated by Section 22 of the said Act is a judicial inquiry and that inquiry could not have been bypassed by the District Court. He submitted that in the circumstances it is necessary to set aside the impugned order and give directions for conducting necessary inquiry as contemplated by Section 22 of the said Act.

4. Mr.Godbole, the learned counsel for the respondents on the other hand submitted that appellant no.1 has in fact resigned. His resignation was accepted by the trust in its meeting held on 19.9.1976. Appellant no.1 has not taken part in the activities of the trust for last 28 years. His objection to the Change Report now, is therefore, malafide. Relying on the judgement of this Court in Madanrao S/o.Nanasaheb Chavan Vs. State of Maharashtra and others, 2002(4) Mh.L.J. 872 the learned counsel contended that in case of a change report under Section 22 rights of any persons are not affected. The persons who cease to be trustees cannot say that they continue to be trustees because new body has not filed the change report in time. Past trustees cannot claim extension of their term on account of failure of a newly elected body to file the change report in time. The learned counsel contended that assuming there is some delay in submitting the change report, inasmuch as the rights of appellant no.1 are not affected because he has resigned and his resignation is accepted by the trust, the District Court cannot be faulted for accepting the change report without inquiry. The learned Counsel contended that appellant no.2 was in fact present in the meeting and had not objected to the change report and therefore, the change report is uncontested, and hence, it is rightly accepted by the District Court. He contended that no interference is necessary with the impugned judgement and order.

5. In my opinion, the District Court has committed error in accepting

the change report without inquiry. In this connection I may usefully refer to the judgement of this Court in Marutirao Vishwanath Bagal and others Vs. Dinkar Kashinath More and others, 2004(4) Mh.L.J. 982, where the learned Single Judge of this Court has extensively dealt with Section 22 of the said Act. The learned Single Judge referred to the judgement of this Court in Jagat Narayansingh Swarupsingh Chithere Vs. Swarupsingh Education Society and another, 1980 Mh.L.J. 372 and observed that in that case it is held that the inquiry contemplated by section 22 is a judicial inquiry. A reference is made to Section 74 of the said Act which provides that an inquiry under the said Act shall be a judicial proceeding. It was then observed that Section 22 of the Said Act does not lay down that the inquiry which is contemplated must be made in every case only after issuing notice to the affected parties. The inquiry contemplated under Section 22 is as regards the change which has occurred in the entires recorded in the Register maintained under Section 17. The format of the register to be maintained is provided in Schedule I to the Rules made under the said Act. The said format of the register shows that many particulars such as names of the trustees and Managers of the trust, mode of succession, object of the trust, immovable property of the trust are required to be incorporated. It was observed that it is obvious therefore that not in case of every change that the notice is required to be issued by the Assistant Charity Commissioner before passing an order on the Change Report.

6. It therefore appears to me that an inquiry under section 22 of the said Act is a judicial inquiry. In case of every change, a notice is not required to be issued to the outgoing trustees or affected parties before passing an order on the change report. Whether the notice is to be given or not will depend on the facts of each case. In a given case there may be consent letters of the outgoing trustees and their affidavits recording that they have no objection for change. In such circumstances the Assistant Charity Commissioner after being satisfied that the documents are genuine and the change is legal, may record his reasons for not giving notice and may allow the change report without giving notice to the outgoing trustees. However, in case there are disputes between the parties such as in the present case notices will have to be issued to the affected parties. Before the final decision is taken, an inquiry will have to be conducted. In this Case, the District Court has failed to notice this important aspect.

7. In this case, the death of the trustees have occurred between 1981 to 2001. Appellant no.1 is said to have resigned on 19.1.1976. However, in the change report no.293 of 2002 there is no mention about the vacancy caused because of the resignation of appellant no.1. This change report is filed on 22.3.2002. The change report regarding appellant no.1's resignation is filed as late as on 22.8.2004. However, till date in the Schedule of the trust, name of appellant

no.1 appears as a trustee. Appellant no.1 has thus disputed the factum of the resignation. Admittedly, in the meeting held on 10.3.2002 appellant no.1 was not present. No notice was given to the appellants. Opportunity of hearing was also not given to the appellants by the Assistant Charity Commissioner. In such circumstances, it was necessary to conduct inquiry under section 22 of the said Act. I am informed by the learned Counsel Mr.Godbole, that the change report as regards the resignation of appellant no.1 is submitted on 22.6.2004. It is numberred as change report no.1266 of 2004. In the facts and circumstances of the case, therefore, in my opinion, both the change reports will have to be decided within the time frame laid down by this Court. Hence, the following order:-

The impugned judgement and order dated 2nd February,2005 passed by the District Court, Solapure, in Civil Misc. Appeal no.137 of 2004, is set aside. The matter is remanded to the Assistant Charity Commissioner, Solapur.

The Assistant Charity Commissioner, Solapur, is directed to dispose of the Change report nos.293 of 2000 and 1266 of 2004, within six months from the date of receipt of this order, in accordance with law, after holding proper inquiry as contemplated under section 22 of the said Act.

Appeal disposed of.

(Smt.Ranjana Desai,J)